DATE NAME OF CASE (DOCKET NUMBER)

12/20/16 STATE OF NEW JERSEY VS. TERRI HANNAH
A-5741-14T3

Defendant was charged with hitting the victim in the face with her shoe. At trial, the State introduced a screenshot taken by the victim of a "tweet" allegedly posted by defendant after the incident saying "shoe to ya face." Defendant argues that this Twitter posting was improperly admitted into evidence, citing a Maryland case requiring that such social media postings must be subjected to a greater level of authentication. The Appellate Division rejects that contention, holding that New Jersey's current standards for authentication are adequate to evaluate social media postings. Under those standards, it was not an abuse of discretion to admit the tweet based on the presence of defendant's photo and Twitter handle, its content containing information specific to the parties involved, and its nature as a reply to the victim's communications.

12/20/16 ANDRE DE GARMEAUX, ET AL. VS. DNV CONCEPTS, INC. T/A THE BRIGHT ACRE, ET AL.
A-1400-14T1

In this case of first impression, we were called upon to determine, among other arguments, whether prevailing plaintiffs in a Consumer Fraud Act (CFA) action are entitled to attorney's fees incurred in defense of a counterclaim. The trial court's decision included consideration of those fees in arriving at the quantum of the award. As we conclude that the defense of the counterclaim was inextricably intertwined with the defense of the CFA claim, consideration by the trial court of the attorney's fees incurred by plaintiffs for that purpose was proper.

12/15/16 NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY VS. S.G.IN THE MATTER OF A.G. AND G.W.G.
A-2533-14T3

Defendant S.G. appeals the trial court's finding that she abused or neglected her two-year-old daughter, in violation of N.J.S.A. 9:6-8.21(c). The trial court found that because defendant permitted drug use and drug dealing in the home where she and her daughter resided, and took no discernable steps to mitigate her daughter's exposure, her conduct was reckless and put her child at substantial risk of harm.

No witnesses testified at the fact-finding hearing. The parties agreed to forego the presentation of witnesses and to have the trial court decide material facts in dispute based solely on redacted copies of a police report detailing the events leading up to and occurring on the date of the drug raid and investigation summaries prepared by the Division of Child Protection and Permanency.

Since a determination of abuse and neglect requires a fact-sensitive analysis of particularized evidence, we hold that witness testimony was necessary to provide the court with the necessary facts to determine whether defendant exercised the requisite minimum degree of care under the circumstances. Merely reciting information found in redacted documentary evidence does not constitute fact-finding. This is especially so when there are unresolved and disputed details regarding facts of consequence to the determination of an abuse or neglect finding. Thus, although the parties acquiesced to a trial "on the papers," the court would have been better equipped to perform its role as fact-finder had these matters been developed more fully with evidence at a testimonial hearing.

12/14/16 STATE OF NEW JERSEY VS. MICHAEL RICHARD POWERS
A-3764-14T2

Defendant was convicted after a trial in municipal court, and again on appeal to the Law Division, of obstruction based on both physical interference and an "independently unlawful act." N.J.S.A. 2C:29-1(a). The court remanded for findings that might illuminate the judge's conclusory determination that defendant physically interfered with a state trooper in the issuance of a parking ticket at a highway rest stop. The court, however, also held that defendant, in these circumstances, could not be convicted of obstruction by means of "an independently unlawful act" that was based solely on N.J.S.A. 39:4-57, which provides that "[d]rivers of vehicles . . . shall at all times comply with any direction . . . of a member of a police department" when the officer is in the course of "enforcing a provision of this chapter." Defendant was outside his vehicle and, therefore not a driver, and the trooper was not enforcing Chapter 39 because he was only issuing a parking ticket.

12/07/16 DEBRA WARREN, ET AL. VS. CHRISTOPHER P. MUENZEN M.D., ET AL.
A-1949-15T4

In 2009, the Legislature amended the Survivor Act, N.J.S.A. 2A:15-3, for the first time including a statute of limitations requiring "[e]very action" under the Act "be commenced within two years after the death of the decedent . . . ." The 2009 Amendment also provided that if the death was a homicide, an action against "a defendant [who had] been convicted, found not guilty by reason of insanity or adjudicated delinquent . . . may be brought at any time." In this regard, the 2009 Amendment mirrored an earlier amendment to the Wrongful Death Act (the WDA).

We granted leave to appeal in this case, in which plaintiff, executrix of her husband's estate, filed a medical malpractice complaint alleging causes of action under the Survivor Act and the WDA. The complaint was not filed within the two-year statute of limitation applicable to bodily injury, N.J.S.A. 2A:14-2, but was filed within two years of the decedent's death. In reversing the motion judge's denial of partial summary judgment to defendant on the Survivor Act claims, we concluded that construing the 2009 Amendment literally would lead to absurd results, contrary to the Legislature's stated intention when adopting the 2009 Amendment and contrary to a number of statutes of limitation found elsewhere in Title 2A.

12/06/16 DONNA SLAWINSKI VS. MARY E. NICHOLAS
A-0710-15T1

Defendant challenges the Family Part's exercise of continuing exclusive jurisdiction, implicating provisions of the Uniform Interstate Family Support Act (the Act), now codified at N.J.S.A. 2A:4-30.124 to - 30.201. Defendant maintains orders modifying child support must be vacated because she relocated to North Carolina, depriving New Jersey of jurisdiction.

The Act as recently amended, includes provisions regarding a New Jersey tribunal's authority to modify a controlling child support order when parents and child no longer reside in the state. See L. 2016, c. 1, eff. April 1, 2016. In this matter, we conclude the facts support the Family Part's authority to exercise continuing exclusive jurisdiction as the prior version of the Act, now repealed, was in effect and permitted the modification of the previously issued child support order. Were the current Act applied, under these facts New Jersey would also have jurisdiction. However, we are compelled to observe the amendments altered the foundations when individuals and the

child leave New Jersey, possibly leaving a jurisdictional gap if there is no agreement among the parties as was shown here.

12/06/16 ANIL K. LALL VS. MONISHA SHIVANI

This appeal involves a parent's effort terminate a grandparent's visitation, which had been allowed pursuant to a consent order. We hold that a parent's rights, which the Court recognized in Moriarty v. Bradt, 177 N.J. 84, 114-15 (2003), do not empower a parent to terminate or modify a consent order unilaterally. Rather, a request to modify or terminate visitation by consent order must be considered in accordance with the Lepis framework. That is, a parent must make a prima facie showing of changed circumstances as would warrant relief. If the parent vaults that threshold, the parent bears the burden to show the modification or termination would not cause harm to the child.

12/05/16 J.S. VS. D.S.
A-5742-14T2

Defendant appealed a domestic violence final restraining order (FRO), claiming it was void upon entry – despite the parties' settlement of matrimonial issues that included defendant's consent to the FRO – because the judge did not find an act of domestic violence had occurred. A few days before the scheduled date for oral argument in this court, the parties stipulated to a dismissal of the appeal that would allow for the perpetuation of the FRO. Notwithstanding their agreement, the court exercised its discretion, pursuant to Rule 2:8-2, and determined that the interests of justice required a disposition of the appeal's merits; the court vacated the FRO due to the lack of a finding of domestic violence, reinstated the TRO, and remanded for a final hearing.

12/05/16 MARK R. KRZYKALSKI, ET AL. VS. DAVID T. TINDALL
A-2539-14T3/A-2774-14T3(CONSOLIDATED)

Plaintiff commenced this personal injury suit against defendant, whose vehicle rear-ended plaintiff's, as well as a fictitious defendant, an unknown driver, who had cut across the lane in which plaintiff was driving to make a left turn. The trial judge permitted the jury to determine whether both defendant and the unknown driver were negligent and, if so, to ascertain their respective responsibility for plaintiff's injuries; both were found negligent, and the unknown driver was found 97% responsible. The court held that the trial judge

properly allowed the jury to apportion responsibility between the known and unknown defendants, extending Cockerline v. Menendez, 411 N.J. Super. 596 (App. Div.), certif. denied, 201 N.J. 499 (2010), which differed only because, in Cockerline, the plaintiff had already settled with the UM insurer and thereby fixed the unknown driver's contribution, and here no such settlement was reached and no proceedings had occurred with respect to the UM carrier.

Judge Leone filed a concurring opinion.

12/01/16 COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO VS. NEW JERSEY CIVIL SERVICE COMMISSION
I/M/O JOB BANDING FOR SOFTWARE DEVELOPMENT SPECIALIST 1 AND 2, AND NETWORK ADMINISTRATOR 1 AND 2, OFFICE OF INFORMATION TECHNOLOGY
I/M/O CHANGES IN THE STATE CLASSIFICATION PLAN AND JOB BANDING REQUEST, DEPARTMENT OF TRANSPORTATION
A-4912-13T3/A-3041-14T3/A-0230-15T3/A-0232-15T3/ A-0274-15T3/ A-0275-15T3 (CONSOLIDATED)

The New Jersey State Legislature and other parties challenged several administrative agency decisions rendered by the Civil Service Commission (CSC) pertaining to a Job Banding Rule (the Rule), N.J.A.C. 4A:3-3.2A. The CSC adopted and implemented the Rule after the Legislature invoked its veto power, pursuant to N.J. Const. art. V, § 4, ¶ 6 (the Legislative Review Clause), finding in numerous concurrent resolutions that the Rule conflicted with the Civil Service Act (CSA), N.J.S.A. 11A:1-1 to 12-6, which incorporated the text of N.J. Const. art. VII, § 1, ¶ 2.

We concluded that the Legislature is entitled to substantial deference when it exercises its constitutional power to invalidate an administrative rule or regulation pursuant to the Legislative Review Clause. We held, however, that we may reverse the Legislature's invalidation of an administrative executive rule or regulation if (1) the Legislature has not complied with the procedural requirements of the Legislative Review Clause; (2) its action violates the protections afforded by the Federal or New Jersey Constitution; or (3) the Legislature's concurrent resolution amounts to a patently erroneous interpretation of "the language of the statute which the rule or regulation is intended to implement."

We reversed the decisions and concluded that the Legislature validly exercised its authority under the Legislative Review Clause. We therefore set aside the Rule, in all of its amended forms.

11/22/16 NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY VS. G.S. AND K.S. IN THE MATTER OF A.S. AND B.S.
A-5222-15T2/A-5223-15T2 (CONSOLIDATED)

We review the Family Part's series of orders that concern the potential need to disqualify one or both staff attorneys from the Office of Parental Representation ("OPR") who respectively represent the father and the mother in defending this child welfare case. The conflict-of-interest questions were prompted by defendants' advocacy of competing parenting plans for the future care of their twin children.

With some modification, we affirm the trial judge's determination to conduct a hearing to explore the conflict and waiver issues that arose in this particular case.

We agree with the OPR, the Office of Law Guardian, and the amicus New Jersey State Bar Association that, with appropriate screening measures, the law does not categorically prohibit or even presumptively disfavor two staff attorneys working out of the same OPR regional office from separately defending each of the parents in child welfare cases. In addition, when a significant divergence arises between the parents during the course of such litigation, the actual or potential conflict often may be mutually waivable by those clients, with appropriate consultation and substantiation of that waiver.

We further conclude that the trial court has an appropriate institutional role in assuring that the zealous independence of the staff attorneys will not be compromised, and that the confidentiality of client communications and attorney work product will be scrupulously maintained. The court retains the authority and discretion to conduct a hearing to explore such matters on a case-by-case basis to address specific instances where particularized concerns have arisen about the propriety of ongoing representation by the staff attorneys or the sufficiency of any client waivers.

11/21/16 STATE OF NEW JERSEY VS. CHARLES WHEATLEY
A-5026-14T1

Distinguishing State v. Reiner, 180 N.J. 307 (2004), we hold that a defendant who was previously convicted of driving while intoxicated (DWI) in a school zone in violation of N.J.S.A. 39:4-50(g) is subject to the increased penalties applicable to second offenders under N.J.S.A. 39:4-50(a)(2) when he was subsequently convicted of a conventional DWI in violation of N.J.S.A. 39:4-50(a).

11/14/16 STATE OF NEW JERSEY VS. RICHARD RIVASTINEO
A-3720-15T2

Based on the plain language of the statute as well as the rule of lenity, the State is precluded from aggregating the weight of cocaine and heroin to achieve a higher degree of crime pursuant to N.J.S.A. 2C:35-5(c).

11/09/16 STATE OF NEW JERSEY IN THE INTEREST OF A.R.
A-2238-14T3

Appellant, a fourteen-year-old juvenile, was found guilty of sexually touching a seven-year old boy on a bus returning from summer camp. The alleged victim was developmentally comparable to a three-year-old. After getting off the bus, he blurted out to his mother's cousin that appellant had touched him during the ride. Eighteen days later, a detective interviewed the younger child on videotape at the county prosecutor's office. The child repeated the accusation, demonstrating it with anatomical dolls. No eyewitnesses on the bus, including the driver and aide, corroborated the incident.

At a pretrial Rule 104 hearing, the court ruled that both of the child's hearsay statements were sufficiently trustworthy to admit under the "tender years" hearsay exception, N.J.R.E. 803(c)(27). The court then queried the younger child at the start of the trial about his ability to discern and tell the truth. The court twice concluded from the child's troublesome responses that he was not competent to testify under the criteria of N.J.R.E. 601. Nevertheless, the court accepted the child's hearsay statements and trial testimony repeating the accusations, based on the so-called "incompetency proviso" in Rule 803(c)(27), which treats children of tender years as available witnesses even if they are not competent to testify.

We conclude that the younger child's statements during his recorded interview with the detective were "testimonial" under the Confrontation Clause, as construed by the United States

Supreme Court in Crawford v. Washington, 541 U.S. 36 (2004), and its progeny. The objective "primary purpose" of the interview was to elicit and preserve statements from an identified child victim of sexual abuse about wrongful acts for potential use as evidence in a future prosecution. The child's testimonial statements to the detective here are distinguishable from the non-testimonial statements that a young child victim made to her teachers at school in Ohio v. Clark, 135 S. Ct. 173 (2015).

Although appellant's counsel attempted to cross-examine the child, that exercise was inadequate to safeguard his confrontation rights, given the child's undisputed incompetency. Hence, we reverse the admission of the detective's interview and the child's in-court testimony because it violated appellant's constitutional rights. However, as appellant concedes, the child's spontaneous assertion after getting off the bus was not testimonial under the Confrontation Clause and was properly admitted. We remand for the trial court to reconsider the proofs in light of our determinations.

11/07/16 IN THE MATTER OF THE PETITION OF SOUTH JERSEY GAS COMPANY FOR A DETERMINATION PURSUANT TO THE PROVISIONS OF N.J.S.A. 40:55D-19./ IN THE MATTER OF THE PETITION OF SOUTH JERSEY GAS COMPANY FOR A CONSISTENCY DETERMINATION FOR A PROPOSED NATURAL GAS PIPELINE
A-1685-15T1/A-2705-15T1/A-2706-15T1

There is sufficient credible evidence in the record to support the decision of the Board of Public Utilities that the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-1 to -163, and any local regulations adopted pursuant to the MLUL shall not apply to a pipeline that South Jersey Gas proposes to construct in the Pinelands, but the Board mistakenly relied upon a decision by the Executive Director of the Pinelands Commission (Commission), who found that construction of the pipeline was consistent with the requirements of the Pinelands Comprehensive Management Plan, N.J.A.C. 7:50-1.1 to -10.35, because the Executive Director did not have authority to render a final decision for the Commission on that issue. Therefore, the matter is remanded to the Commission for review of the Executive Director's decision, and the Board is directed to issue an amended order, stating that its approval of the pipeline is conditioned upon issuance by the Commission of a final decision finding that the pipeline satisfies the requirements of the CMP.

11/04/16 THE ESTATE OF FRANCIS P. KENNEDY, ET AL. VS. STUART A. ROSENBLATT, C.P.A., ET AL.

A-5397-15T4

This interlocutory appeal involves a conflict-of-interest issue that arose after plaintiffs' attorney, who had filed and dismissed a professional negligence action while at his former firm, recommenced the action after joining his new firm, which had represented a defendant in the original action. That defendant, now represented by the same individual attorneys (who had since joined another firm) moved to disqualify plaintiffs' new firm under RPC 1.10(b), on the basis that attorneys there had information protected by RPC 1.6 and RPC 1.9 material to the action, namely, electronically stored confidential documents.

Construing RPC 1.10(b) in light of recent amendments to RPC 1.6 (confidentiality of information) and its commentary, we concluded the senior member of plaintiff's new firm/defendant's former firm, who reviewed the electronically stored file to determine if a conflict existed, could review the metadata (defined in RPC 1.0 (p)) and document titles without violating RPC 1.10(b); but could not review the substantive content of the documents without violating RPC 1.10(b). We remanded the matter for a determination of that issue.

We also suggested the Advisory Committee on Professional Ethics review what obligation the defendant's attorneys had upon leaving their former firm to assure the client's information was secure and would not be improperly accessed.

11/02/16 CUMBERLAND FARMS, INC. VS. NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, ET AL.
A-4335-14T2

In this opinion, we conclude that plaintiff, the owner of convenience stores and gas stations throughout the State, failed to establish that it had an enforceable settlement agreement with the New Jersey Department of Environmental Protection ("the DEP") that purportedly resolved natural resource damage claims the DEP had asserted under the New Jersey Spill and Compensation Act, N.J.S.A. 58:10-23.11 to -23.50. Although the DEP sent plaintiff a draft settlement agreement for review, plaintiff never formally responded to the DEP's overtures and never sought to participate in the negotiations necessary to complete the process.

We also address the applicability of N.J.S.A. 58:10-23.11e2 to the settlement process. That provision, which went into effect in April 2006, requires the DEP to publish public notice

concerning the terms of a proposed settlement at least thirty days prior to its agreement to any settlement. Here, we hold that the parties never agreed upon the terms of the settlement and, therefore, the DEP was not required to publish notice of the proposed settlement pursuant to the statute. However, we make clear that had the parties agreed upon the settlement terms and published those terms for public comment, the DEP would have had the authority to thereafter consummate, withdraw from, or modify the agreement based upon the responses received during the public comment period.

10/21/16 A.M.C. VS. P.B.
A-4730-14T3

The Family Part found defendant physically assaulted his wife twice over a three-week period. Applying the two-prong analysis in Silver v. Silver, 387 N.J. Super. 112, 125-27 (2006), the judge found an FRO was not necessary to protect plaintiff from future acts or threats of violence. We hold the Family Part failed to adequately consider the inherently violent nature of the predicate acts. Under these circumstances, the need to issue an FRO was "self-evident." Silver, supra, 387 N.J. Super. at 127.

Defendant, a Newark Police Officer, was not served with the TRO. Notwithstanding defendant's failure to object, N.J.S.A. 2C:25-28l, N.J.S.A. 2C:25-28n, and the Domestic Violence Procedures Manual makes the Judiciary responsible to serve defendant with the TRO. We hold the trial court had an obligation to determine what caused this systemic failure. We further hold the trial court erred as a matter of public policy when it considered the Judiciary's failure to carry out this legal responsibility as a factor in favor of denying plaintiff's application for an FRO.

10/19/16 NEW JERSEY TRANSIT CORPORATION VS. MARY FRANCO, ET AL.
A-3802-12T4

Plaintiff condemned a property comprised of parcels in three municipalities. The trial court's just compensation award was based on the "highest and best use" of placing apartment buildings on the parcels in two municipalities and placing a driveway on the lots in the third municipality, whose zoning did not allow apartment buildings. The Appellate Division held that use of those lots for a private driveway servicing adjacent lots

was itself a "use" and would require a use variance from the third municipality. Offering to dedicate the driveway as a public street would similarly require acceptance by the third municipality. Thus, the condemnee was required to show a reasonable probability the third municipality would have granted acceptance or a use variance, even if the driveway's design complied with the Residential Site Improvement Standards.

The escrow for environmental cleanup of a condemned property should be based on the remediation needed to achieve the highest and best use of the property used to calculate the condemnation award, rather than the condemnor's intended or actual use, with any unspent funds returned to the condemnee.

10/19/16 PETRO-LUBRICANT TESTING LABORATORIES, INC., and JOHN WINTERMUTE VS. ASHER ADELMAN, d/b/a eBossWatch.com
A-5214-14T4

In August 2010, defendant published an article on his website reporting on a complaint filed against plaintiffs by an employee containing allegations of gender discrimination and a hostile workplace environment. Over a year later, counsel for plaintiffs threatened defendant with a defamation lawsuit if the article was not removed. In response, defendant made minor changes to the article and re-posted it in December 2011. Although there was slightly different wording in the two articles and the title was changed, the allegedly defamatory content and substance was the same, and to some extent lessened.

The legislative purpose of favoring a short statute of limitations would be defeated if immaterial changes to an Internet post, that is viewed on a far wider scale and for an indefinite period of time than is traditional mass media, were to result in a retriggering of the statute of limitations on each occasion. Therefore, the statute of limitations will only be triggered if a modification to an Internet post materially and substantially alters the content and substance of the article.

The modifications made by defendant in the second article were intended to diminish the defamatory sting of the previously reported allegations. If a minor modification diminishes the defamatory sting of an article, it should not trigger a new statute of limitations.

The single publication rule is applicable, and the complaint filed in June 2012 is barred as untimely, as the

statute of limitations commenced with the posting of the original article in August 2010. The grant of summary judgment to defendant is affirmed.
The dismissal of defendant's counterclaim for retaliation is also affirmed. Defendant did not have standing under the NJLAD to assert a claim of retaliation as he had no relationship with the aggrieved employee nor had he aided or encouraged her in asserting her rights; he was a publisher who claimed to have objectively reported on an employment litigation.

10/04/16 NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY VS. J.D., JR. AND J.G. IN THE MATTER OF J.D., III
A-3716-14T4

Defendant J.D., Jr. appeals the trial court's finding that he abused or neglected his ten-year-old son, in violation of N.J.S.A. 9:6-8.21(c). No witnesses testified at the fact-finding hearing. The parties agreed to forego the presentation of witnesses and to have the trial court decide the disputed matter based solely on redacted copies of police reports of the incident and investigation summaries prepared by the Division of Child Protection and Permanency.

In this appeal, the court rejects defendant's belated challenge to the admission of the documents as barred by the invited error doctrine. The court also applies the principle that hearsay is generally evidential if no objection is made. Here, the trial judge gave the appropriate weight to the objectionable hearsay, and the record supports the judge's finding that defendant abused or neglected his son by leaving him unattended in a vehicle in the late evening while defendant entered a bar, became intoxicated, and attempted to flee the police.

The court nonetheless expresses concern over the dangers inherent in adjudicating contested trials based solely on documentary evidence. The procedure employed here, that is, submitting redacted documents in lieu of testimonial evidence, does not lend itself to the resolution of disputed factual issues or credibility determinations. Thus, even when the parties acquiesce to a trial "on the papers," the court cautions that fact-finding hearings that bear upon the welfare of children must still adhere to fundamental rules of evidence and be conducted with the formality and decorum attendant to any other adjudicative proceeding.

09/29/16 MIDLAND FUNDING LLC A/P/O WEBBANK VS. ROBERTA BORDEAUX

A-0850-14T3

Plaintiff filed a civil action in small claims court to collect the full amount of a consumer debt's alleged outstanding balance. The issue in this appeal concerns the enforceability of an arbitration clause that plaintiff claims was part of the original creditor's consumer credit application form. Plaintiff's sole evidence of the arbitration agreement's existence consists of two single-spaced, photocopied pages that do not bear defendant's signature or any other indicia of her assent. The trial court enforced the arbitration clause, relying only on a certification in which a "Legal Specialist" employed by plaintiff attested that the two pages were in the records of plaintiff's predecessor in interest.

We reverse. Relying on Atalese v. U.S. Legal Serv. Grp., L.P., 219 N.J. 430, 442 (2014), cert. denied, ___ U.S. ___, 135 S. Ct. 2804, 192 L. Ed. 2d 847 (2015), we hold that plaintiff failed to prove that defendant knowingly waived her constitutional right to adjudicate this dispute in a court of law.

09/21/16 STATE OF NEW JERSEY VS. BRIAN A. GREEN
A-2656-12T3

In this appeal from a conviction for possession of marijuana with intent to distribute, we address the question of whether the holding in State v. Cain, 224 N.J. 410 (2016), should be applied retroactively to cases still pending on appeal.

Based upon our review of the language used by the Supreme Court in Cain and in State v Simms, 224 N.J. 393 (2016), as well as other post-Odom decisions by the Court, we conclude Cain's holding must be given pipeline retroactivity, and applied to all cases pending on direct appeal.

09/20/16 STATE OF NEW JERSEY VS. STEVEN RIZZITELLO
A-0536-15T2

Defendant was indicted on a single count of fourth-degree operating a motor vehicle during the period of license suspension for a second or subsequent conviction for driving while intoxicated, in violation of N.J.S.A. 2C:40-26(b). The State appeals from the order of the trial court which admitted defendant into PTI over the prosecutor's veto. We reverse. The prosecutor's decision to reject defendant's application for

admission into PTI did not constitute "a patent and gross abuse of discretion" as defined by the Supreme Court in State v. Roseman, 221 N.J. 611, 625 (2015).

However, we reject the prosecutor's characterization of the fourth degree offense under N.J.S.A. 2C:40-26(b) as falling within the crimes that by their very nature carry a presumption against admission into PTI.

09/20/16 MYRNA B. TAGAYUN AND ROBERT S. MANDELL v. AMERICHOICE OF NEW JERSEY, INC., ET AL.
A-1628-13T1 (NEWLY PUBLISHED)

In this matter the trial court awarded counsel fees against two pro se plaintiffs for the filing of two complaints, pursuant to N.J.S.A. 2A:15-59.1(a)(1) and Rule 1:4-8(a), which allow an award of counsel fees when a pleading filed by a non-prevailing party is frivolous. When the original complaint was dismissed by the court as lacking merit, the plaintiffs filed both a second complaint and an appeal. We concluded the award of counsel fees was appropriate for the filing of the second complaint, but not for the first complaint.

We explain the history of the frivolous pleading sanctions and the need to strictly construe the term "frivolous" to avoid litigants becoming afraid to access the courts because of a fear they may be sanctioned if they pursue a good faith, but misguided claim.

09/19/16 STATE OF NEW JERSEY IN THE INTEREST OF JUVENILE, I.C.
A-5119-13T1

In this appeal and cross-appeal, we address the issue of whether a juvenile was entitled to credit on his suspended sentence for the time he spent in a residential community home program as part of his probationary sentence to the Juvenile Intensive Supervision Program ("JISP"). We also consider whether the juvenile should have been granted credit on his sentence for the period during which he participated in the JISP following his completion of the community home program.

Based upon our review of the record and applicable law, we hold that the juvenile was not entitled to credits for either of these periods. Therefore, we affirm the trial judge's decision denying the juvenile's request for credits for his time in the community home program, and reverse the judge's decision

granting the juvenile credits for the period he participated in the JISP.

09/14/16 LEONIDES VELAZQUEZ VS. CITY OF CAMDEN AND OFFICER ALEXIS RAMOS
A-4627-13T4

We reverse the no-cause verdict in this New Jersey Civil Rights Act action brought by the victim of a police shooting against a Camden police officer and the involuntary dismissal of the case against the officer's employer, City of Camden, on the basis of two critical evidentiary errors.

First, the trial court, over plaintiff's objection, permitted an assistant prosecutor who headed the homicide unit to testify that after reviewing the investigation of the shooting, he determined not to criminally prosecute the officer. The obvious import of that testimony was that the prosecutor believed the officer's shooting of plaintiff was a justifiable use of force. We conclude the assistant prosecutor's opinion was clearly inadmissible under the lay opinion rule, N.J.R.E. 701, and because the jury could very well "have ascribed almost determinative significance to that opinion," Neno v. Clinton, 167 N.J. 573, 587 (2001), the error could not be considered harmless.

Second, the trial court barred plaintiff from making any reference to the officer's mental health records, reasoning that because excessive force claims are analyzed under the Fourth Amendment's "objective reasonableness" standard, the officer's subjective state of mind was irrelevant to whether his use of force was objectively reasonable under the circumstances. Plaintiff, however, never sought to use the records to challenge the officer's subjective motivation in firing on him. Instead, plaintiff sought to use the records to challenge the officer's perceptions and his ability to make observations, a classic use of extrinsic evidence to impugn a witness's credibility under N.J.R.E. 607.

We conclude that interpreting the "objective reasonableness" standard for evaluating excessive force claims so expansively as to preclude a cross-examiner from probing whether the officer's psychiatric symptoms affected his ability to accurately perceive the events giving rise to the claim, was error. Because the ruling severely prejudiced plaintiff in his ability to prove his excessive force claim against the officer

and gutted his Monell claim against the City, we reverse the verdicts in defendants' favor and remand for a new trial.

09/12/16 LISA LOMBARDI VS. ANTHONY A. LOMBARDI
A-3624-13T1

This appeal required us to address the calculation of alimony where the parties relied on only a fraction of their household income to pay their monthly expenses and regularly saved the balance during the course of their marriage. It is well-established that the accumulation of reasonable savings should be included in alimony to protect the supported spouse against the loss of alimony. See Jacobitti v. Jacobitti, 135 N.J. 571, 582 (1994); Martindell v. Martindell, 21 N.J. 341, 354 (1956); Davis v. Davis, 184 N.J. Super. 430, 437 (App. Div. 1982). In this case, we considered whether the parties' history of regular savings as part of their marital lifestyle requires the inclusion of savings as a component of alimony even when the need to protect the supported spouse does not exist.

The Family Part found that the monthly savings were part of the marital lifestyle, but excluded the amount from its calculation of alimony because savings were not necessary to ensure future payment of alimony. We disagreed with the court's decision and held that regular savings must be considered in a determination of alimony, even when there is no need to create savings to protect the future payment of alimony.